92-717

OCT 23 1992
OFFICE OF THE CLERK

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

JOSEPH EMILE SISSLER

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI VOLUME I

STUART R. SHAFER (P-25599)
REID AND REID
One Business & Trade Center
200 Washington Square, North
Lansing, Michigan 48933-1384
(517) 487-6566
Attorneys for Defendant-
Petitioner

APPENDIX - VOLUME I

TABLE OF CONTENTS

Appendix A
Decision of United States Court of Appeals (6th Cir. June, 1992) .. 1-34

Appendix B
Judge Benjamin F. Gibson's June 8, 1990 Opinion 35-55

Appendix C
Judge Benjamin F. Gibson's August 30, 1991 Opinion 56-77

Appendix D
Indictment 78-80

Appendix E
Plea Agreement 81

Appendix F
Judge Gibson's October 10, 1990 Order Reopening Proofs 82-88

Appendix G
Judgment in a Criminal Case 89-90

Appendix H
Hon. Benjamin F. Gibson's October 7, 1991 Opinion & Order.... 91-93

Appendix I
Hon. Benjamin F. Gibson's October 14, 1992 Order 94-95

Appendix J
Affidavit for Search Warrant and Search Warrant 96-111

Appendix K
FBI Agent Langkos' Testimony 112-115

APPENDIX A

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v

On Appeal from the United States District Court for the Western District of Michigan

JOSEPH EMILE SISSLER,

Defendant-Appellant.

Before: GUY and BOGGS, Circuit Judges; and RONEY, Senior Circuit Judge.*

PER CURIAM. The defendant in this marijuana possession case appeals from the district court's denial of his motion to suppress evidence obtained from a search of a home in which he was a guest. We affirm.

---

* Honorable Paul H. Roney, United States Court of Appeals for the Eleventh Circuit, sitting by designation.

I.

This appeal arises out of the execution of a warrant to search a house owned by Robert Baldori in Okemos, Michigan. Baldori, a professional musician and attorney shared the house with his girlfriend, Kelly Boyle. At the time of the search, Baldori, Boyle, and their overnight quest, the defendant Joseph Sissler, were in the house.

On January 12, 1990, four days before the search was carries out, an FBI agent obtained an anticipatory warrant from a federal magistrate to search Baldori's house. The warrant was contingent on an informant, Jim Joseph, successfully completing the delivery of police supplied marijuana to Baldori at his home, pursuant to an agreement between Joseph and Baldori. The warrant authorized the police to seize marijuana, scales, proceeds of marijuana sales in the form of U.S. currency, records of marijuana transaction, records of assets purchased with marijuana proceeds,

safety deposit box keys, and phone numbers of marijuana suppliers and customers.

Joseph delivered 88 pounds of marijuana to Baldori late on the evening of January 15, 1990. While Joseph was inside, Sissler arrived in a car bearing Virginia tags and entered the house. Neither the officers nor Joseph were expecting anyone to arrive, and Sissler was unknown to the authorities. Joseph emerged from the house shortly after midnight and confirmed that he had delivered the marijuana to Baldori. He had not spoken with Sissler.

Approximately 24 local and federal officers then executed the warrant and searched the house for more than 5 hours. The police combed the entire house and opened containers, including Sissler's briefcase and overnight bag. The officers recovered the marijuana delivered by Joseph, seized large amounts of currency from Sissler's overnight bag and elsewhere, and arrested Baldori and

Sissler. They also seized records belonging to Baldori. The seizure included 500 computer disks, as well as three personal computers, two printers, and a modem. Some of the local officers also seized sexually explicit photographs and slides of Kelly Boyle.

An IRS agent and officers from a local forfeiture unit also participated in the search. They seized records, some dating back to 1969, in an apparent attempt to determine Baldori's net worth. The forfeiture unit also seized a fax machine.

During the search, the officers separated Sissler and Baldori, warned Sissler of his Miranda rights, and questioned him. In response to these questions, Sissler indicated that he had intended to use the cash found in his overnight bag to buy marijuana from Baldori.

One week later, a federal grand jury charged Sissler with attempting to possess marijuana with intent to distribute. He moved

to suppress his statement and the evidence seized from Baldori's house. After the district court denied the motion, Sissler entered a conditional guilty plea to the attempted possession charge.

Meanwhile, state authorities were investigating the conduct of some of the local officers who has participated in the search. This investigation led a state prosecutor to charge two of the officers with criminal offenses.

Sissler moved to reopen the suppression hearing, and the district court granted the motion, limiting the hearing to the issue of whether of officer had flagrantly disregarded the scope of the warrant. At the reopened suppression hearing, Sissler called several of the officers who had been charged or were being investigated by the state prosecutor. Each of these officers refused to testify about his role in the search and invoked the Fifth Amendment privilege against self-

incrimination.

At the conclusion of the reopened suppression hearing, the district court again denied Sissler's motion to suppress the fruits of the search. This appeal followed.[1]

II.

Sissler first argues that his Confrontation Clauses rights were violated when several of the officers who had participated in the search invoked the privilege against self-incrimination when Sissler called them to testify during the suppression hearing. He maintains that the officers' refusal to testify deprived him of his right to confront adverse witnesses.

As an initial matter, the government concedes that Sissler has a Confrontation Clause right to examine any witness who gives "damaging" testimony against him, even if

---

[1] After denying Sissler's renewed motion to suppress, the district court sentenced Sissler to 57 months imprisonment but allowed him to continue his bond pending the outcome of this appeal.

Sissler called the witness to testify. See Chambers v Mississippi, 410 U.S. 248, 298 (1973). However, the government points out that the officers who asserted the privilege gave no testimony of any kind against Sissler at the suppression hearing.

Even if we were to agree with Sissler that the officers who declined to answer the questions were somehow witnesses against him, we would not hold that their silence violated his Confrontation Clause rights. The Sixth Amendment does not compel the government to produce all witnesses competent to testify, see Unites States v Moore, 954 F.2d 379, 381 (6th Cir. 1992), nor does it compel government witnesses who do testify to waive their testimonial privileges, see McCray v Illinois, 386 U.S. 300, 314 (1967).

Finally, we observe that the Supreme Court has rejected Confrontation Clause challenges to the use of incompetent testimony during suppression hearing. See United States

v Matlock, 415 U.S. 164, 175 (1974); McCray, 386 U.S, at 314; see also United States v Boyce, 797 F.2d 691, 693 (8th Cir. 1986) ("the right of confrontation does not apply to the same extent at pretrial suppression hearing as it does at trial"). The Court has repeatedly explained that "[t]he right to confrontation is basically a trial right." Barber v Page, 390 U.S. 719, 725 (1968).; see also Pennsylvania v Ritchie, 480 U.S. 39, 52 (1987) (Powell, J.); California v Green, 399 U.S. 149, 157 (1970).

Accordingly, we hold that Sissler's Sixth Amendment rights were not violated when several officers invoked the Fifth Amendment privilege against self-incrimination during the suppression hearing.

III.

Sissler argues that the search violated his rights under the Fourth Amendment. Specifically, he contends that: (1) probable cause was absent at the time the magistrate

issued the anticipatory search warrant; (2) the police failed to execute the warrant within the time specified; (3) the search warrant did not authorize the police to open his overnight bag and briefcase; (4) the search warrant was unconstitutionally overbroad; and (5) the police flagrantly disregarded the terms of the warrant and conducted a general search.

We must first determine whether Sissler has standing to raise all of these arguments. The district court concluded that Sissler was an overnight guest and, as such, has standing to challenge the search of the Baldori home. The government concedes that Sissler was an overnight guest and has standing to challenge the search of his personal belongings and his "guests quarters" at the Baldori residence, but argues that he lacks standing to attack the search of the rest of the house.

The Supreme Court recently considered the Fourth Amendment standing of overnight guests

in Minnesota v Olson, 495 U.S. 91 (1990). In Olson, the Court held that the defendant's "status as an overnight guest is alone enough to show that he had an expectation of privacy in the home that society is prepare to recognize as reasonable." Id., 495 U.S. 96-97. The Court further elaborated:

> That the guest has a host who has ultimate control of the house is not inconsistent with the guest having a legitimate expectation of privacy. The houseguest is there with the permission of his host, who is willing to share his house and his privacy with his guest. It is unlikely that the guest will be confined to a restricted area of the house; and when the host is away or asleep, the guest will have a measure of control over the premises.

Id. at 99 (Emphasis added).

Olson contains no language to support the governments argument that an overnight guest obtains a privacy interest only in his guest quarters.[2] On the contrary, a natural reading

---

[2]The governments reliance on Rakas v Illinois, 439 U.S. 128 (1978), is misplaced. In Rakas, the Court held that a car passenger has no legitimate expectation of privacy in

of Olson suggest that an overnight guest's privacy interest in a home is not limited unless the host restricts the guest's movement. See United States v Osorio, 949 F.2d 38, 41 (2d Cir. 1991) (holding that overnight guests had standing to challenge search of entire premises absent proof that host restricted guest's movements).

Since the government does not point to any evidence that Baldori limited Sissler's movement about the house, we conclude that Sissler had standing to challenge the search of the entire house. We now turn to Sissler's specific Fourth Amendments arguments.

A.

Sissler maintains that the magistrate

---

the car's glove compartment. Id. at 148-89. In dicta, the Court explained that a "casual visitor" to a home has no standing to challenge the search of the basement he has never seen. Id. at 142. In Olson, the Court carefully explained its holding in Rakas and held that an overnight guest, unlike a casual visitor on the premises, has a privacy interest in his host's home. Olson, 495 U.S. at 97-89.

lacked probable cause when he issued the anticipatory search warrant four days before Joseph delivered the marijuana to Baldori's home. This claim requires us to review the information available to the magistrate at the time he issued the warrant.

On January 10 and 11, Joseph, wearing a transmitting devise and a tape recorder, met with Baldori to negotiate the sale of approximately 100 pounds of marijuana. On January 11, Baldori told Joseph that he could not take delivery until January 15. The state police then made arrangements to provide Joseph with marijuana for delivery on January 15. On January 12, FBI Agent Dennis Langkos sought and obtained the anticipatory warrant at issue in this appeal. Langkos' affidavit contained the information obtained from Joseph, as well as other information. The warrant was expressly conditional on Joseph successfully delivering marijuana to the Baldori home. Sissler argues that no probable

cause for the search existed until Joseph actually delivered the marijuana late on the evening of January 15. He maintains that the issuance of the anticipatory warrant allowed the authorities to manufacture probable cause after obtaining the warrant.

Sissler relies heavily on the decision in United States v Hendricks, 743 F.2d 653, 654-55 (9th Cir. 1984), cert. denied, 470 U.S. 1006 (1985), in which the Ninth Circuit stated that an anticipatory warrant is valid only if the contraband is on a "sure course" to the place to be searched. The court held that the suitcase containing cocaine was not on a sure course to the defendant's home at the time the warrant was issued because there was no assurance that the defendant would pick up the suitcase at the airport or that he would take it home if he did pick it up. Id. At least two other circuits have adopted the sure course standard employed by the Ninth Circuit. See United States v Nixon, 918 F.2d 895, 903

n.6 (11th Cir. 1990); United States v Goodwin, 854 F 2d. 33, 36 (4th Cir. 1988);

The government points to United States v Garcia, 882 F.2d 699, 702-03 (2d Cir.), cert. denied, 493 U.S. 943 (1989), in which the Second Circuit upheld an anticipatory warrant contingent upon an informant's controlled delivery of cocaine to the defendant's home. The court held that an anticipatory warrant is valid in such a situation so long as there is probable cause to believe that the contraband will be on the premises at the time the search is executed. Id., 882 F.2d at 703.

We had earlier reached the same conclusion at the Garcia court in a case involving the mailing of a package containing heroin. United States v Lowe, 575 F.2d 1193 (6th Cir.), cert denied, 439 U.S. 869 (1978). In Lowe, we upheld the use of an anticipatory warrant so long as "there is probable cause to believe that [the contraband] will be there when the search warrant is executed." Id, 575

F.2d at 1194.

We need not decide whether the police must show that the contraband is on the sure course or whether they need merely establish probable cause to believe that it will be at the place to be searched. The anticipatory warrant in this case is valid under either standard.

At the time the warrant was issued, the police controlled the marijuana that was eventually delivered to Baldori. Joseph, an informant working for the government, had arranged to deliver it to Baldori's home on January 15. These undisputed facts support a finding that the marijuana was on a sure course to Baldori's home at the time the warrant was issued. As the Ninth Circuit acknowledged in Hendricks, a controlled delivery by the government can satisfy the requirement that the contraband be on a sure course to the place to be searched. 743 F.2d

at 655.[3]

We find that there was sufficient assurance that marijuana would be delivered to Baldori's home to satisfy both the sure course and probable cause standards. Accordingly, we hold that the magistrate validly issued the warrant.

B.

Sissler next argues that the authorities failed to execute the warrant within the time specified. The warrant commanded the officers to search Baldori's home "upon the delivery of marijuana." (App 680). Sissler complains that the agent did not execute the warrant until

---

[3]Sissler argues that the sure course requirement is satisfied only in the contraband is in the mail. The Hendricks court listed a mailing as an example of a controlled delivery satisfying the sure course requirement. 743 F.2d at 655. The court never suggested that the warrant would have been valid only if the suitcase had been mailed to Hendricks; instead, the warrant was invalid because there was no assurance that Hendricks would pick up the suitcase and return to his home. Id By contrast, the affidavit for the warrant in this case stated that Joseph would deliver the marijuana to Baldori's house.

more that two hours after Joseph arrive with the marijuana.

The government points out that the warrant was not executed for several hours because the officers waited until Joseph left the house before executing the warrant. The officers could not be sure that delivery actually had occurred until Joseph came out without the marijuana. The officers executed the warrant shortly after Joseph emerged. Accordingly, we find that the officers executed the warrant "upon the delivery" of the marijuana in a timely manner.

C.

Sissler argues that the officers lacked probable cause to open his briefcase and overnight bag. The officers found the briefcase in Baldori's recording studio and the overnight bag in the office. Inside the overnight bag, the officers discovered prescription medication in Sissler's name and $130,000 in cash. The briefcase contained

$1,120 in cash.

A warrant that authorized officers to search a home also authorized them open containers that might contain items which in the scope of the warrant. United States v Ross, 456 U.S. 798, 821 (1982); United States v Calarco, 668 F.2d 920, 921 (6th Cir. 1982). However, "special concerns may arise when visitors are present on the premises." United States v Gray, 814 F.2d 49, 51 (1st Cir. 1987).

In Gray, the First Circuit refused to exclude evidence found in a jacket during the execution of a search warrant because the police did not know that the jacket belonged to a visitor when they began to search it. Id.2 In this case, the district court found that the searching officers did not know who owned the overnight bag and briefcase until after they had opened them. Since there is no evidence that this factual finding is clearly erroneous, we concluded that the officers did

not violate the Fourth Amendment by opening Sissler's bag and briefcase.[4]

Even if we were to find that the officers knew or should have known that Sissler owned the bag and briefcase, we would find that these items were within the scope of the warrant. An item belonging to a visitor may be searched if there is a relationship between the visitor and the place. See United States v Giwa, 831 F.2d 538, 544-45 (5th Cir. 1987) (upholding search of overnight visitor's bag); Gray, 814 F.2d at 51 (upholding search of visitors property found inside residence where a late-night drug deal had just occurred). Conversely, if there is no reason to suspect that a person found on the premises is

---

[4]Sissler argues that the officers should have realized that the overnight bag was his and stopped searching when they found a pill bottle bearing his name. Even assuming that the discovery of the pill bottle would have obligated the officers to close the bag, there is no indication in the record that the officers discovered the pill bottle before they found the cash.

connected with a crime or is anything more than a casual visitor, the police may not search his or her belongings. See United States v Robertson, 833 F.2d 777, 784 (9th Cir. 1987); United States v Micheli, 487 F.2d 429, 432 (1st Cir. 1973).

Sissler arrived late at night while a major drug deal was occurring. He was an overnight guest, not a mere visitor. Therefore, he was sufficiently connected to the home to fall within the scope of the warrant.

D.

Sissler contends that the search warrant was facially overbroad. Specifically, he argues that the warrant failed to identify the items to be seized with sufficient particularity. We review search warrant overbreadth claims de novo. United States v Gahagan, 865 F.2d 1490, 1496 (6th Cir.), cert denied, 492 U.S. 918 (1989).

The Fourth Amendment requires that search

warrants describe the items to be searched for and seized with particularity so that the warrant does not authorize the police to conduct a general rummaging search. Andresen v Maryland. 427 U.S. 463, 480 (1976). The degree of specificity required varies with the type of item sought, but a description is valid if it is as specific as the circumstances permit. United States v Henson, 848 F.2d 1374, 1383 (6th Cir. 1988), cert denied, 488 U.S. 1005 (1989). At an "irreducible minimum, a proper warrant must allow the executing officer to distinguish between items that may and may not be seized." United States v Leary, 846 F.2d 592, 602 (10th Cir. 1988).

The search warrant in this case authorized the officers to search for and seize: (1) marijuana; (2) scales used to weigh marijuana; (3) proceeds of marijuana sales in the form of U.S. currency; (4) records of marijuana transactions; (5) records of assets

purchased with the proceeds of marijuana transactions; (6) safety deposit box keys; and (7) phone and address books containing names, addresses, and phone numbers of marijuana customers and suppliers.

Sissler argues that the third, fourth, and fifth items are overbroad. He points out that the warrant contained no guidelines to tell the executing officers how to distinguish currency that come from marijuana transactions from the currency. Consequently, the police seized all the currency on the premises, including $130,000 from Sissler's bag, $1,200 from Sissler's briefcase, and $550 from Sissler's money belt, $143 from Sissler's wallet, and more that $17,00 from other locations in the house. [5]

Although the seizure of all the currency is troubling, Sissler does not explain how a

---

[5]The seizure included $1,030 in Canadian currency which belonged to Boyle. The government concedes that seizure of the Canadian currency was beyond the scope of the warrant.

more detailed warrant would have allowed the officers to distinguish marijuana proceeds from other currency. Since there was probable cause to believe that there would be marijuana proceeds on the premises and since a more specific description was not possible, we concluded that the description of the currency in the warrant was not overbroad. See Henson, 848 F.2d at 1383.

Sissler argues that the descriptions of records of marijuana transactions and assets purchased with marijuana proceeds are overbroad. The affidavit supporting the warrant provided evidence that Baldori had been selling marijuana since early 1989, but the warrant did not command the officers to limit their search to recent records. The police seized some of Baldori's records dating back more than 20 years.

The absence of a time limitation does not make a warrant overbroad if the magistrate is unable to specify an appropriate time frame.

See United States v Shilling, 826 F.2d 1369 (4th Cir. 1987), cert denied, 484 U.S. 1043 (1988). However, when there is information available to limit a search for records, the warrant is overbroad if it contains no such limitations. See United States v Cardwell, 680 F.2d 75, 78 (9th Cir. 1982) (reversing conviction where overbroad warrant contained no time limitation).

Assuming, without deciding, that the records potion of the warrant was facially overbroad, the normal remedy is to sever that potion of the warrant for the portions that do pass constitutional muster. United States v Blakeney, 942 F.2d 1001, 1027 (6th Cir. 1991), cert denied, ___ U.S. ____, 112 S. Ct. 881 (1992); Cardwell, 680 F.2d at 78. Since none of the records seized pertained to Sissler, the suppression of items seized pursuant to the arguably overbroad portions of the warrant would provide him with no relief. Sissler's requested remedy, suppression of all items

seized in the search, would be appropriate only if the entire warrant were overbroad. Cardwell, 680 F.2d at 78-79. Accordingly, we find that the warrant was not facially overbroad as to the evidence to the introduced against Sissler.[6]

E.

Sissler and amicus, the American Civil Liberties Union, contend that the evidence from the search must be suppressed because the police exceeded the terms of the warrant by indiscriminately seizing items that were outside the scope of the warrant. Sissler and the ACLU argues that the officers conducted the search with flagrant disregard for the

---

[6]Sissler also argues that the search was a pretext to allow agents from the IRS and the state forfeiture unit to enter the home. Sissler cites to no authority supporting his claim that the Fourth Amendment bars state police and IRS agents from accompanying FBI agents during the execution of a federal search warrant. However, those accompanying agents are bound by the terms of the search warrant.

limitations of the warrant.[7] This claim requires us to review in some detail the items that were seized from the Baldori house.

We begin with the electronic equipment. The search warrant return indicates that the officers seized three computers, two printers, a modem, a fax machine, and several disk drives. The language of the search warrant does not appear to support the seizure of any of these items.

The government argues that the officers needed to seized the computers because drug records could have been stored in their internal memories. Accepting this contention as true, the government does not explain why

---

[7]The ACLU also claims that some of the officers were completely ignorant of the warrant's limitations and that there ignorance converted the search into an unconstitutional general search. See United States v Heldt, 668 F.2d 1238, 1261-62 (D.C. Cir. 1981), cert denied, 456 U.S. 926 (1982). Our review of the record reveals that, although some of the officers has an expansive view of the search, there is no evidence that the officers were completely ignorant of the contents of the warrant.

the police also needed to seize printers, modems, and disk drives.

As to the fax machine, the government maintains that it was not responsible for the seizure because a state forfeiture team seized it. We disagree. Since the local officers entered the house under the federal warrant and had no independent authority to seize items not covered by the federal warrant, we must consider everything seized as part of the same search. See United States v Medlin, 842 F.2d 1194, 1197 (10th Cir. 1988). We also observed that a federal agent prepared the warrant return that listed the fax machine.

Detective Early, from the state forfeiture unit, testified that he seized the fax machine because the unit was interested in any item that appeared to be new. A grand piano and a stereo were spared because them appeared to be old.

Second, the officers seized $1,030 in Canadian currency. Boyle testified that she

had earned the money working in Windsor, Ontario. The warrant authorized the seizure of only U.S. currency.

Third, the officers seized records that fell outside the scope of the warrant. The testimony of officers who participated in the search indicated that the house was cluttered with poorly organized records and that the officers seized only 10 percent of the records.

We agree with the government and the district court that, under those circumstances, the agents need not read each individual document to determine whether it falls within the warrant. See Henson, 848 F.2d 1383. It is therefore inevitable that the officers will seize some documents that are outside the scope of the warrant, particularly since Baldori kept voluminous records relating to his legal and musical careers on the premises.

Detective Early testified that most of

the records he seized, some dating back to 1969, were taken in an attempt to establish Baldori's net worth. The warrant did authorize seizure of records showing purchases made with marijuana proceeds, but did not authorize the officers to seize all of Baldori's financial records to establish his net worth. The intentional seizure of those documents goes far beyond the terms of the warrant.

Fourth, the officers seized more than 30 intimate photographs and slides of Boyle. The government concedes that the photos and slides are not covered by the warrant. The officer or officers who took the slides and photos did not list them on the search warrant return. Two officers have been charges in state court with illegally taking items during the search.[8]

---

[8]Sissler's brief repeatedly calls attention to the fact that some of the local police officer held a slide show at the police station to display Boyle's nude photos. While we agree that this conduct is outrageous, it

We observe that the evidence incriminating Sissler, the cash found in his overnight bag and briefcase, was within the scope of the warrant. In United States v Lambert, 771 F.2d 83, 93 (6th Cir.), cert denied, 474 U.S. 1034 (1985), we stated that the unlawful seizure of items outside of the scope of the warrant normally does not require the suppression of evidence lawfully seized. However, we went on to explain that "[a] flagrant disregard for the limitations of a search warrant might make an otherwise valid search an impermissible general search requiring the suppression of all evidence seized during the search." Id, 771 F.2d at 93.

The government cites several cases in which courts have found that officers who exceeded the scope of a warrant did not act in

---

is irrelevant to our analysis. The slides are relevant only because there were seized illegally during the search.

flagrant disregard to the warrant.[9] Sissler points out that in those cases the officers seized items, typically records, not covered by the warrant while searching for similar items that were within the scope of the warrant.

Sissler argues that the facts in this case are similar to those considered by the Tenth Circuit in Medlin, In Medlin, federal officers obtained a warrant to search for firearms in the defendant's home. Local officers accompanied the federal officers and seized 667 items of allegedly stolen property.

---

[9]See United States v Lambert, 887 F.2d 1568, 1572 (11th Cir. 1989) (inadvertent seizure of records unrelated to drug trafficking); Henson, 848 F.2d at 1383 (inadvertent seizure of records to fraud scheme); Shilling, 826 F.2d at 1369 (seizure of file cabinet of documents, only some of which were relevant) United States v Crozier, 777 F.2d 1376, 1381 (9th Cir, 1985) (inadvertent seizure of irrelevant records); United States v Whitten, 706 F.2d 1000, 1010 (9th Cir. 1983) (seizure of boxes of letters and documents taken for later review), cert denied, 465 U.S. 1100 (1984) Heldt, 668 F.2d 1260-69 (seizure of documents not covered by warrant).

The Tenth Circuit upheld the suppression of all evidence, including the firearms, concluding that the officers flagrantly disregarded the limitations of the warrant by searching for and seizing the allegedly stolen property. Medlin, 842 F.2d at 1199; see also United States v Rettig, 589 F.2d 418, 423 (9th Cir. 1978) (ordering suppression of all evidence where police conducted general search).

We agree that the record established that some of the officers apparently engaged in egregious misconduct while searching the Baldori home. Unlike the defendants in Medlin and Rettig, however, Sissler's rights were not violated by the misconduct. All of the property seized from him was within the scope of the warrant. Thus, even if we were to find that the officers searched Baldori's home in flagrant disregard of the warrant's scope, we would find that the officers did not violate Sissler's rights. We believe deterrence would

not be served by allowing Sissler to benefit from the alleged violation of Baldori's and Boyle's Fourth Amendment rights. Cf. Medlin, 842 F.2d at 1200 (finding exclusion of legally seized weapons serves deterrence where officers violated defendant's rights by illegally seizing hundreds of items). Accordingly, we affirm the district court's denial of Sissler's motion to suppress.

IV.

Sissler finally argues that the statement he made to the officers must be suppressed. Sissler concedes that the interrogating officers read him Miranda right, that the signed a consent form acknowledging his rights, and the he agreed to talk with the officers before he made the incriminating statement. The testimony of the interrogating officer indicates that Sissler engaged in a wide-ranging conversation for approximately two hours until he indicated that he wished to speak with an attorney. The interrogation

then stopped.

We find no evidence in the record to support Sissler's claim that the officers coerced him into making the incriminating statements. Instead, the evidence indicates that Sissler voluntarily waived his Miranda rights and agreed to talk with officers.[10] We affirm the district court's refusal to suppress Sissler's statements.

AFFIRMED.

---

[10]Sissler appears to argue that this statements were involuntary because he was ill at the time. However, a statement is involuntary for constitutional purposes only if it is the product of official coercion Colorado v Connelly, 479 U.S. 157, 167 (1986).

APPENDIX B

APPENDIX B

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

File No. 1:90-CR-12

Hon. Benjamin F. Gibson

v.

JOSEPH EMILE SISSLER,

Defendant.

OPINION

INTRODUCTION

This matter is before the Court as a result of the defendant's motions to suppress incriminating statements and contraband. After conducting hearings regarding these motions on March 15, April 20, and May 24, 1990, the Court denies the motions for the reasons stated below.

FACTS

On January 16, 1990, at approximately 12:00 A.M., between 15 to 25 federal and local

law enforcement officials executed a federal anticipatory search warrant, see generally 2 W. LaFave, Search and Seizure § 3.7(b) (2d ed. 1987), at the home and recording studio of Robert Baldori in Okemos, Michigan. The warrant authorized the search of the premises and its surrounding cartilage for marijuana, marijuana paraphernalia, record of drug transactions and proceeds from marijuana sales in the form of U.S. currency. As a result of the search, a number of items, including approximately 88 pounds of marijuana, were seized by the police.

Present at the time of the raid was the defendant, John Sissler, a resident of Virginia and an overnight guest of Baldori's. During the course of the search, at least two officers searched an overnight travel bag belonging to defendant Sissler. The search of the overnight bag revealed in excess of $130,000.00 in U.S. currency. The currency, travel bag, and a briefcase and its contents

were seized from the defendant.

The defendant was advised of his Miranda rights and executed a "boilerplate" form indicating that he understood his rights and was willing to talk to police. Government's Exh. 1. He was interviewed in the recording studio located on the first floor of the house by two officers. Aside from a brief period of time following the initial entry to the residence, the defendant was not handcuffed. From the testimony given at the suppression hearing, the interrogation of the defendant was conducted in a gentlemanly fashion. During the course of his interview with police, the defendant made several incriminating statements. Following the discovery of the contraband and the confession of the defendant, he was arrested for attempting to possess with the intent to distribute approximately 100 pounds of marijuana.

Sissler seeks to suppress both the

contraband and the statements. He argues that there was not probable cause to issue a search warrant. The defendant also argues that the warrant was overly broad and did not authorize the search of his briefcase and overnight bag. He also argues that the interrogating officers continued to question him despite repeated requests by him for an attorney and that his statements were involuntary and the result of police coercion.

ANALYSIS

1. SEARCH OF THE BALDORI RESIDENCE

The defendant argues that the warrant authorizing the search of the Baldori residence was not supported by probable cause.[1] He also argues that even if the search warrant was supported by probable cause, it was drafted in an overly broad manner and did not authorize the search of his overnight bag. The Court rejects both contentions.

A. Probable Cause

In Illinois v. Gates, 462 U.S. 213 (1983), the Supreme Court rejected the "two-pronged" test of Aguilar-Spinelli[2] in favor of a "totality-of-the-circumstances" approach to determine the reliability of the information given by an informant. Id. at 238. See Spinelli v. United States, 393 U.S. 410 (1969); Aguilar v. Texas, 378 U.S. 108 (1964). Under Gates, the task of the issuing magistrate is to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and the "basis of knowledge" of the informant, there is a fair probability that evidence of a crime will be found in the place to be searched. Gates, 462 U.S. at 238. Furthermore, a reviewing court is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed. Id. at 238-39. After reviewing the affidavit in

support of the request for a search warrant, the Court concludes that the magistrate had probable cause to issue the warrant.

The affidavit clearly establishes that the informant clearly had first-hand, personal knowledge of Baldori's involvement with marijuana. It states that the informant, who appears to be some sort of "middleman" or marijuana broker, had previously sold large amounts of marijuana to Baldori. The informant further states that all of the marijuana he sold to Baldori during 1989 came from the same supplier. The informant states that he would be contacted by his supplier whenever he had marijuana available. The informant would then pass this information on to Baldori and arrange a sale. According to the informant, the marijuana purchased by Baldori had always been shipped to the Lansing area by automobile and that the driver was employed by his supplier. Furthermore, once the marijuana reached the Lansing area, he

would take possession of it and make further delivery arrangements with Baldori. Finally, the Court notes that at the time these statements were made by the informant, a shipment of marijuana which the informant says was intended to be delivered to Baldori had been seized by police authorities in the Little Rock, Arkansas area and the informant's supplier and a driver associated with the supplier had been arrested.

The information contained in the affidavit also clearly establishes the informant's truthfulness. The Court notes that the informant advised Baldori in a conversation following the arrests in Little Rock, Arkansas that marijuana was available from his regular supplier.[3] The affidavit also states that the two men, in a conversation taped by police officials, later discussed the terms of the sale and made arrangements for the delivery of the marijuana to Baldori once it reached the Lansing area.

This chain of events and conduct of Baldori is consistent with the other information provided by the informant and establishes his credibility.

The Court believes that the testimony of the informant provided the magistrate with a substantial basis for concluding that there was probable cause to find marijuana at the Baldori residence once it was delivered by the informant. Id. at 238-39. Other testimony contained in the affidavit clearly establishes that there was probable cause for the magistrate to believe that marijuana paraphernalia, records, and currency from marijuana transactions would be located there as well. Therefore, the Court concludes that the magistrate properly issued the search warrant at issue in this case.

B. Overbreadth

Sissler also argues that the warrant was overly broad and did not authorize the search of his overnight bag. Defendant correctly

argues that a search warrant should contain objective standards by which the executing officers can differentiate between items subject to seizure and those objects not subject to seizure. E.g., United States v. McLaughlin, 851 F.2d 283, 285 (9th Cir. 1988). Since the warrant at issue in the present case did not contain specific guidelines to assist the officers in determining what currency found at the Baldori residence was proceeds from drug transactions, defendant argues that the warrant did not authorize the search of his overnight bag and briefcase.

The meritlessness of this argument is readily apparent. This Court cannot conceive of and the defendant does not recommend a set of guidelines that would permit police to determine whether currency found during a search is the result of a drug transaction by simply observing the money. Rather, the Court believes that the creation of such guidelines are impossible.

Moreover, the Court notes that, as a general rule, police officers are entitled to search any container found within premises lawfully subject to search if there is reason to believe that the contraband sought pursuant to the warrant can be found in the container. United States v. Ross, 456 U.S. 798, 820-21 (1982). Thus, the mere fact that the briefcase and overnight bag belonged to Sissler, rather than Baldori, does not insulate them from search or seizure under this doctrine. E.g., United States v. Giwa, 831 F.2d 538, 543-45 (5th Cir. 1987). However, if at the time the law enforcement officials executed the warrant, the circumstances were such that the officers either knew or should have known that the container searched was owned by a "mere visitor" or "passerby" otherwise unconnected with the premises, the search may be considered a personal search outside the scope of the search warrant authorizing the search

of the premises. Id. See also United States v. Robertson, 833 F.2d 777, 78384 (9th Cir. 1987): United States v. Gray, 814 F.2d 49, 51 (1st Cir. 1987); 2 W. LaFave, Search and Seizure § 4.10(b)(2d ed. 1987).

From the testimony given at the suppression hearing, the Court concludes that the police were entitled to search the briefcase and overnight bag belonging to the defendant. There is insufficient evidence before the Court to support a finding that the police should have known that these items belonged to a "mere visitor" or "passerby," a status that may not accurately describe the relationship of the defendant to the Baldori residence given the facts of the present case. Giwa, 831 F.2d at 545; Gray, 814 F.2d at 51. From the testimony at the suppression hearing, it is readily apparent that both the overnight bag and briefcase were nondescript, generic items and could not be readily identified as the defendant's prior to being searched.

Since it is reasonable to conclude that a briefcase or overnight bag could contain marijuana, currency, paraphernalia or records of marijuana transactions, the police were permitted to search these items pursuant to the search warrant.

2. REQUESTS FOR COUNSEL

The defendant maintains that the incriminating statements he made are inadmissible since he had repeatedly attempted to invoke his Fifth Amendment right to counsel. The Court concludes to the contrary.

The Fifth Amendment requires that when a person requests an attorney during a custodial interrogation, all questioning must cease until an attorney is present, unless the individual subsequently initiates the conversation with the authorities. E.g., Edwards v. Arizona, 451 U.S. 477 (1981). This principle is a "rigid prophylactic rule." Smith v. Illinois, 469 U.S. 91, 95 (1981). Courts are required "to give a broad, rather

than a narrow interpretation to a defendant's request for counsel." Michigan v. Jackson, 475 U.S. 625, 633 (1986). These standards apply even if the defendant's request for counsel is equivocal. E.g., Towne v. Dugger, 899 F.2d 1104, 1106-07 (11th Cir. 1990); Norman v. Ducharme, 871 F.2d 1483, 1486 (9th Cir. 1989). If an ambiguous request for counsel is made, further questioning must be limited to clarifying the request until it is so clarified. Towne, 899 F.2d at 1107; Norman, 871 F.2d at 1486.

At the suppression hearing, defendant Sissler testified that he made several requests for an attorney during the course of his interrogation. He stated that he inquired of the two interrogating officers at the beginning of the questioning whether they felt he needed an attorney and received no answer. Sissler also maintained that he repeated this question several times as the interrogation progressed and on each occasion received no

response. Finally, the defendant testified that he shouted in the direction of Baldori that he needed an attorney on several occasions.

However, the record of the suppression hearing indicates a lack of evidence that would corroborate the defendant's testimony. The record reveals that the two interrogating officers, during both direct and cross-examination, unequivocally maintained that no question concerning the need for counsel was asked by the defendant until the end of the interrogation. At that point, the testimony of both officers indicates that the questioning was stopped as is required by Miranda and its progeny. Their testimony also makes no mention of the defendant shouting in the direction of Baldori. Furthermore, there is no evidence in the record, aside from the testimony of the defendant, that would cast doubt on the testimony given by the officers.

Given the lack of corroborating testimony

to support the defendant's testimony and the steadfast manner in which the officers refused to contradict or retract their direct testimony on cross-examination, the Court concludes that the defendant made no attempt to invoke his right to counsel until the conclusion of the interrogation. Accordingly, the Court concludes that no violation of the defendant's Fifth Amendment right to counsel occurred as a result of his interrogation.

3. VOLUNTARINESS OF THE STATEMENTS

Sissler also maintains that his incriminating statements were involuntary and in violation of the due process clause of the Fifth Amendment. The Court concludes that the defendant's argument is meritless.

The test for voluntariness of a confession is whether, in light of the totality of the circumstances, exerted pressures have overborne the will of the accused. Schneckloth v. Bustamonte, 412 U.S. 218, 225-26 (1973); United States v. Murphy,

763 F.2d 202, 205 (6th Cir. 1985); cert. denied. 474 U.S. 1063 (1986). A reviewing court must consider both the conduct of the police in extracting the statements from the accused and the effect that conduct had on the defendant. Miller v. Fenton, 474 U.S. 104, 116 (1985). However, in the absence of police conduct casually related to the confession, there is no basis for concluding that a confession is involuntary. Colorado v. Connelly, 479 U.S. 157 (1986).

Sissler maintains that his confession was involuntary for a number of reasons. His testimony at the suppression hearing indicates that he felt intimidated due to the large number of police officers present at the Baldori residence and the fact that a large number of these officers possessed weapons. Sissler's testimony also suggests that he felt intimidated since he had seen Baldori talking to police officials in an adjacent room. His testimony also provides that he felt ill at

the time of the interrogation and was taking a prescription medication to combat the flu. Finally, he argues that his confession was the result of implied promises of benefit for cooperating with the authorities.

The Court believes that this testimony does not establish that the confession was involuntary. The mere presence of a large number of officers and the interrogation of another suspect in an adjacent room cannot be considered police misconduct. Norman, 871 F.2d at 1487. Furthermore, the fact that the defendant may have been suffering from the flu at the time of his interrogation does not make his confession involuntary since the evidence presented to the Court at the suppression hearing indicates that the defendant was coherent and alert during his questioning. E.g., United States v. Yunis, 859 F.2d 953, 962-64 (D.C. Cir. 1988). There is simply no evidence before the Court that would even suggest that the defendant's mental faculties

were impaired as a result of his illness at the time of the interrogation. Id. Moreover, the defendant's contention that his confession was the result of an improper promise is without merit. The testimony of both the defendant and the interrogating officers indicates that the officers encouraged the defendant to continue the interrogation. On several occasions, statements suggesting that the defendant could benefit himself by cooperating with the authorities were made by the interrogating officers. However, the testimony also indicates that no specific promises of leniency were made to the defendant and that the issue of cooperation was not discussed until the defendant had already incriminated himself. Statements made by a defendant in the hope of leniency, as opposed to a promise of leniency, are not coerced. E.g., United States v. Fraction, 795 F.2d 12, 14 (3d Cir. 1986); Rachlin v. United States, 723 F.2d 1373, 1377-78 (8th Cir.

1983). Since there is no evidence of police misconduct, the Court can only conclude that the defendant's confession was given voluntarily.

Finally, the Court notes that a variety of topics were discussed during the course of the defendant's interview. The testimony of both the defendant and the interrogating officers indicates that they freely and openly discussed the Latin American policy of the Bush Administration, the war on drugs, recent magazine articles, the defendant's mother and the defendant's employment with the National Institute of Health. Furthermore, the record indicates that the defendant is a college graduate and has completed some post-graduate work. He also has had prior experience with the criminal justice system. These factors buttress the Court's conclusion that the defendant's confession was voluntary.

CONCLUSION

For the reasons stated above, the

defendant's motions are denied.

BENJAMIN F. GIBSON
U.S. DISTRICT JUDGE

DATED: June 8, 1990

1.Since the defendant was an overnight guest at the time the Baldori residence was raided by police, he has standing to challenge the validity of the search. See Minnesota v. Olson, 58 U.S.L.W. 4464 (Apr. 18, 1990); Rawlings v. Kentucky, 448 U.S. 98 (1980).

2.Under the Aguilar-Spinelli test, a magistrate, in determining whether the information supplied by an informant was sufficient to establish probable cause, had to independently review both the basis of the informant's knowledge and the veracity or reliability of the informant.

3.The informant slyly told Baldori that the earlier shipment of marijuana, the one seized by authorities in Arkansas, was not delivered to him because the informant's supplier rejected it due to its poor quality. The marijuana actually delivered to the Baldori residence appears to have been supplied by law enforcement officials in the Lansing area.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

File No. 1:90-CR-12

Hon. Benjamin F. Gibson

v.

JOSEPH EMILE SISSLER,
Defendant.

ORDER

As a session of the Court held in and for said District and Division, in the City of Grand Rapids, Michigan, this 8th day of June, 1990.

PRESENT: HON. BENJAMIN F. GIBSON,
U.S. DISTRICT JUDGE

In accordance with the Opinion dated June 8, 1990, IT IS HEREBY ORDERED that defendant Joseph Emile Sissler's motions to suppress are DENIED.

IT IS SO ORDERED.

BENJAMIN F. GIBSON
U.S. DISTRICT JUDGE

APPENDIX C

APPENDIX C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT DIVISION OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH EMILE SISSLER,

Defendant.

File No. 1:90-CR-12

Hon. Benjamin F. Gibson

OPINION

I.

This matter is before the Court as a result of the defendant's renewed motion to suppress evidence because of alleged violations of his Fourth and Sixth Amendment rights. Following four days of evidentiary hearings and the submission of briefs by the parties, the Court denies the motion for the reasons given below.

II.

On January 16, 1990, at approximately

12:00 A.M., between 15 and 25 federal and local law enforcement officials executed a federal anticipatory search warrant, see generally 2 W. LaFave, Search and Seizure § 3.7(b) (2d ed. 1987), at the home and recording studio of Robert Baldori in Okemos, Michigan. The warrant authorized the search of the premises and its surroundings for marijuana, marijuana paraphernalia, marijuana proceeds in the form of United States currency, records of drug transactions, records of assets purchased with the proceeds of marijuana transactions, and records identifying marijuana customers and suppliers. Present at the time of the raid was the defendant, John Sissler, a resident of Virginia and an overnight guest of Baldori's. As a result of the raid, defendant Sissler was charged with one count of attempted possession of marijuana with intent to distribute in violation of Title 21 United States Code Section 846(c) and one count of interstate

travel in aid of racketeering in violation of Title 18 United States Code Section 1952(a).

After holding evidentiary hearings on March 15, April 20, and May 20, 1990, the Court denied the defendant's motion to suppress contraband seized during the raid and incriminating statements made by him. United States v. Sissler, No. 1:90-CR-12, slip op. at 12 (W.D. Mich. June 8, 1990). Following the denial of his motion, defendant Sissler entered a conditional plea of guilty to the controlled substances charge in accordance with Rule 11(a)(2) of the Federal Rules of Criminal Procedure.[1] Shortly before his scheduled sentencing, the defendant, citing newly discovered evidence, moved to re-open proofs on his suppression motion.

This motion was heard at the time originally set aside for the defendant's sentencing. The Court was informed that a number of slides and photographs of Baldori's girlfriend were taken from the premises and

were shown at "stag office parties" by some of the law enforcement officers involved in the January 16, 1990, search of Baldori's residence. It also learned that two local officers involved in the search were the subjects of a criminal investigation. This evidence led the Court to grant a hearing on the issue of whether the conduct of the officers who executed the search warrant exhibited a "flagrant disregard" for its limitations.[2]

III.

In his renewed motion to suppress, defendant Sissler has alleged a number of violations of the Fourth Amendment. Each alleged wrong is discussed separately below.[3]

A.

A criminal investigator from the Internal Revenue Service was invited by an agent of the Federal Bureau of Investigation to participate in the execution of the warrant at the Baldori residence. His presence has led the defendant

to advance the incredulous argument that the warrant served as a subterfuge for the Internal Revenue Service.[4]

The subterfuge characterization will attach to a search where the reasons given for it in the warrant and supporting documentation were merely a pretext to gain access for some other reason. 2 W. LaFave, supra § 6.7(d). A quintessential example of this principle is United States v. Sanchez, 509 F.2d 886 (6th Cir. 1975), a case cited by the defendant in support of his argument. In that case, agents from the Bureau of Alcohol, Tobacco and Firearms, acting on a tip that explosives were present at the defendant's residence, assisted local law enforcement officers in the execution of their warrant authorizing a search for controlled substances. Id. at 888. The Sixth Circuit concluded that the federal officials had impermissibly used the opportunity to assist local police in the execution of their warrant as a pretext for

conducting a search for a type of evidence separate and distinct from that sought by their local counterparts. Id. at 889.

What the defendant chooses to ignore though is that the warrant authorized the seizure of the very evidence that would interest the Internal Revenue Service. It states that records of drug transactions and records of assets purchased with marijuana proceeds can be seized. Rather than having two agencies seeking two distinctly different types of property, as in Sanchez, the present case involves several different agencies seeking the same evidence. Therefore, the Internal Revenue Service did not use its invitation as a subterfuge to impermissibly collect evidence and the Court rejects the defendant's argument to the contrary.

B.

Defendant Sissler once again maintains that the warrant was overly broad.[5] He correctly argues that a search warrant should

contain objective standards that the executing officers can use to differentiate between items subject to seizure and those not subject to seizure. E.g., United States v. McLaughlin, 851 F.2d 283, 285 (9th Cir. 1988). Since the warrant allegedly did not contain guidelines to assist the officers executing it, the defendant argues evidence seized pursuant to it should be suppressed.

The warrant executed at the Baldori residence states that marijuana, marijuana paraphernalia, marijuana proceeds in the form of United States currency, records of drug transactions, records of assets purchased with the proceeds of marijuana transactions, and records identifying marijuana customers and suppliers may be seized. Some of the property that was subject to seizure, marijuana, marijuana paraphernalia and marijuana proceeds, is by its very nature contraband. When contraband is to be seized, the fourth amendment only requires a general description

of it. 2 W. LaFave, supra § 4.6(c).

If records and other documents are to be seized, they should be described with a greater degree of specificity because of the potential for a very serious invasion into personal privacy. Anderson v. Maryland, 427 U.S. 463, 482 n.11 (1976). However, warrants simply authorizing the seizure of "records" have been upheld if it was clear what type of records were seizable and a more precise description was not possible. E.g., United States v. Storage Spaces Designated Nos. 8 & 49, 777 F.2d 1363, 1370 (9th Cir. 1985); United States v. Wuagneux, 683 F.2d 1343, 1349-50 (11th Cir. 1982), cert. denied, 464 U.S. 814 (1983). Contrary to the defendant's assertion, a warrant limiting the seizure of records to those that were created after a specific date or the like was not possible because the police had no knowledge when Baldori's alleged illicit activity commenced. When determining whether a warrant meets the

particularity requirements of the Fourth Amendment, "[o]ne of the crucial factors . . . is the information available to the government." United States v. Cardwell, 680 F.2d 75, 78 (9th Cir. 1982). Since more specific information was not available to the government, the general description "records" meets the requirements of the Fourth Amendment.

C.

Defendant Sissler argues that the police officers executing the warrant at the Baldori residence flagrantly disregarded its terms and conducted an impermissible general search. United States v. Henson, 848 F.2d 1374, 1383 (6th Cir.), cert. denied, 488 U.S. 1005 (1988); United States v. Lambert, 771 F.2d 83, 93 (6th Cir.), cert denied, 474 U.S. 1034 (1985). A flagrant disregard for a warrant's limitations "might make an otherwise valid search an impermissible general search requiring the suppression of all evidence

seized during the search." Id. Given the amount of evidence seized by the police that was not mentioned by the warrant, the defendant maintains that the Court can only conclude that an impermissible general search occurred. While the record supports the contention that a large amount of evidence not mentioned by the warrant was seized, it does not support the conclusion that the police conducted an impermissible general search.

Among the evidence presented to the Court at the suppression hearing was a videotape taken by some of the officers involved in the raid. Clutter and a seemingly endless collection of papers were present throughout those portions of the Baldori residence that were videotaped.

Thousands of documents were taken from the Baldori residence. Each document seized by the police was not inspected to make certain that it was covered by the warrant. Rather, two officers testified that if a file

contained what appeared to be documents covered by the warrant, it would be seized, in its entirety, for further review. One of these officers also testified that it would have taken days to individually review each document found during the search. Given the clutter that was present at the Baldori residence, there is every reason to believe this representation.

Wholesale seizures of files motivated by considerations of practicality are not a "flagrant disregard" for the limitations of a search warrant. Marvin v. United States, 732 F.2d 669, 674-75 (8th Cir. 1984); United States v. Tamura, 694 F.2d 591, 597 (9th Cir. 1983). Clearly, a large number of the documents seized by the police were not mentioned by the warrant. It is equally clear though that practical considerations, not a desire to engage in indiscriminate "fishing," led to their seizure. Under the circumstances, it would be unreasonable to

hold that the law enforcement officials were required to carefully review each document in every file they uncovered. Henson, 848 F2d at 1385. Rather, they were only required to have a reasonable belief that a file or collection of papers found in the clutter contained records that were covered by the warrant.

Furthermore, it is difficult to characterize the seizure of documents from the Baldori residence as a "wholesale seizure." The testimony of law enforcement officers suggests that the number of documents seized by them represented only a small percentage of the number of documents found at the Baldori residence. One officer who assisted with the seizure of documents estimated that fewer than ten percent of the documents found by the police were actually taken. Given the seemingly endless clutter present at the Baldori residence, the Court is inclined to agree with these statements.

In addition to the large number of documents, nearly five hundred computer disks and a personal computer were also taken. Many of the disks contained information whose seizure was not authorized by the search warrant. Law enforcement officers are permitted to search any container found within the premises if there is reason to believe that the evidence sought pursuant to a warrant is in it. United States v. Ross, 456 U.S. 798, 820-21 (1982). The police were permitted to examine the computer's internal memory and the disks since there was every reason to believe that they contained records whose seizure was authorized by the warrant. Furthermore, the police were not obligated to give deference to the descriptive labels placed on the discs by Baldori. Otherwise, records of illicit activity could be shielded from seizure by simply placing an innocuous label on the computer disk containing them. The police also were not obligated to inspect

the computer and disks at the Baldori residence because passwords and other security devices are often used to protect the information stored in them. Obviously, the police was permitted to remove them from the Baldori residence so that a computer expert could attempt to "crack" these security measures, a process that takes some time and effort.[6] Like the seizure of documents, the seizure of the computer hardware and software was motivated by considerations of practicality. Therefore, the alleged carte blanche seizure of them was not a "flagrant disregard" for the limitations of a search warrant. Marvin, 732 F.2d at 674-75; Tamura, 694 F.2d at 597.

Nevertheless, it does appear that several items whose seizure cannot be justified on the grounds of practicality were taken by law enforcement officers. In addition to the aforementioned photographs and slides of her, some Canadian currency belonging to Mr.

Baldori's girlfriend was taken. Some United States currency found in a pair of pants and money belt belonging to Mr. Baldori that arguably was not proceeds from drug transactions was taken as well. Furthermore, a computer printer and a fax machine were seized.[7]

However, the seizure of these items cannot be considered the type of outrageous conduct needed to support the conclusion that the police flagrantly disregarded the terms of a warrant. The behavior of the police who searched the Baldori residence cannot be fairly compared to that exhibited by a local police officer who seized 667 items that he thought might have been stolen while assisting federal officials with the execution of a warrant. United States v. Medlin, 842 F.2d 1194, 1196, 1198-99 (10th Cir. 1988). See also United States v. Rettig, 589 F.2d 418 (9th Cir. 1978). A search does not become invalid simply because some items not

mentioned by the warrant are seized. Lambert, 771 F.2d at 93. This is especially true where, as in the present case, the items outside the scope of the warrant are not going to be used as evidence against the defendant. Henson, 848 F.2d at 1383 (citing United States v. Shilling, 826 F.2d 1365, 1369 (4th Cir. 1987), cert. denied, 484 U.S. 1043 (1988)). Therefore, the Court holds that the officers who executed the warrant at the Baldori residence did not flagrantly disregard its terms.

D.

Much of the defendant's voluminous brief and supporting exhibits addresses the alleged failure of local police officials to follow their internal operating procedures and their alleged violations of various provisions of the Michigan State Constitution. What the defendant forgets though is that the compliance with the Fourth Amendment, not the Michigan State Constitution and internal

policies, is all that is required for the seized evidence to be used against him. United States v. Loggins, 777 F.2d 336, 338 (6th Cir. 1985). Therefore, this argument is summarily rejected.

E.

The defendant also argues that the conduct of the officers executing the warrant was "so outrageous [that is shocks] the universal sense of justice and, as such, requires the dismissal of the indictment." United States v. Arango, 853 F.2d 818, 82728 (11th Cir. 1988). The conduct of the officers involved in the search of the Baldori residence does not even begin to approach this level.

IV.

At the suppression hearing, defendant Sissler called one of the officers that was a subject of the criminal investigation as a witness. This officer invoked his Fifth Amendment right not to incriminate himself.

Because of the crucial role this officer played in the execution of the search warrant, defendant Sissler argues that he was denied his Sixth Amendment right to confront the witnesses against him.

The Confrontation Clause of the Sixth Amendment has long been read as securing criminal defendants only the right to adequately cross-examine adverse witnesses. United States v. Owen, 484 U.S. 554, 557-59 (1988); California v. Green, 399 U.S. 149, 188 (1970) (Harlan, J., concurring). It has not been read, for example, as giving criminal defendants the right to force law enforcement officials to reveal their confidential informants. Cooper v. California, 386 U.S. 58, 62 n.2 (1967). Similarly, this Court declines to hold that its guarantees are abridged when a witness associated with the Government declines to answer questions during the defendant's direct examination. Otherwise, defendants could simply manufacture

violations of the Confrontation Clause by calling witnesses who they know will invoke their Fifth Amendment rights and calling them crucial to their defense. It is inappropriate for the defense to call a witness that it knows will assert the Fifth Amendment right against self-incrimination.[8] United States v. Crawford, 707 F.2d 447, 449 (10th Cir. 1983); People v. Dyer, 425 Mich. 572, 57677, 390 N.W.2d 645, 648-49 (1986). Acceptance of the defendant's argument would foster such unethical conduct. Therefore, the Court simply holds that the rights guaranteed by the Confrontation Clause were not violated because the officer did not testify against the defendant.

V.

For the reasons stated above, the defendant's motion to suppress is denied.

BENJAMIN F. GIBSON
U.S. DISTRICT JUDGE

DATED: August 30 , 1991

1.The interstate travel charge was dismissed pursuant to the plea agreement.

2.The defendant did not present this argument to the Court in his initial suppression motion because the supporting evidence did not come to light until sometime after the June 8, 1990 Opinion and Order.

3.The Government maintains that Minnesota v. Olson, 110 S. Ct. 1684 (1990), should not read as permitting the defendant to challenge the search of the Baldori residence for documentary evidence because an overnight guest is rarely granted access to the portions of a home where such evidence is kept. Since the language in Olson discussing the standing of an overnight guest is, as the Government concedes, extremely broad, the Court declines to base its resolution of defendant Sissler's suppression motion on this issue.

4.The defendant also argues that the warrant was used as a subterfuge to seize property for future forfeiture proceedings. The defendant suggests that a warrant specifically mentioning the property to be forfeited is required for their seizure under Michigan's Forfeiture Statute, see Mich. Comp. Laws Ann. § 333.7522 (West 1981), and the Fourth Amendment. Assuming the defendant is correct, the unlawful seizure of property for future forfeiture proceedings would not require the suppression of all evidence because the conduct of the law enforcement officers who executed the search warrant did not exhibit a flagrant disregard for its terms. See infra Part III-C.

5.In the first suppression hearing held in the spring of 1990, the defendant argued that the warrant failed to give objective guidelines articulating how to distinguish currency from drug transactions from other currency. Stating that no such guidelines were possible, the Court rejected the argument.

6.The parties stipulated at the hearing that a half-hearted attempt to "break" some of the passwords was made.

7.Computer printers contain no internal memory device. Moreover, they can be used with a variety of computers. These observations lead the Court to conclude that the police should have used their own printer when they reviewed the computer hardware and software rather than seizing Mr. Baldori's for that purpose. Therefore, the Court declines to uphold the seizure of this item on the grounds of practicality.

The Government also invokes the "plain view" doctrine to uphold the seizure of the fax machine. It maintains that items purchased with proceeds from illicit activity may be seized under this doctrine. The Court declines to consider the merits of this argument.

8.It is also inappropriate for the prosecution to engage in such conduct.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT DIVISION OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH EMILE SISSLER,

Defendant.

File No. 1:90-CR-12

Hon. Benjamin F. Gibson

ORDER

At a session of the Court held in and for said District and Division, in the City of Grand Rapids, Michigan, this 30th day of August, 1991.

PRESENT: HON. BENJAMIN F. GIBSON,
U.S. DISTRICT JUDGE

In accordance with the Opinion dated August 30, 1991, IT IS HEREBY ORDERED that defendant Joseph Emile Sissler's renewed motion to suppress is DENIED.

IT IS SO ORDERED.

BENJAMIN F. GIBSON
U.S. DISTRICT JUDGE

APPENDIX D

APPENDIX D

UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

- - - - - - -

UNITED STATES OF AMERICA,

Plaintiff,

vs. Case No. 1:90:CR:12

JOSEPH EMILE SISSLER, INDICTMENT

Defendant. Hon. Benjamin F. Gibson

_____/

Count 1

On or about January 15, 1990, in Ingham County, in the Western District of Michigan, Southern Division,

JOSEPH EMILE SISSLER,

defendant herein, did knowingly, willfully and unlawfully attempt to possess with intent to distribute approximately 100 pounds of marijuana, a schedule I controlled substance.

21 U.S.C. § 841 (a) (1)

21 U.S.C. § 846

COUNT 2

On or about January 15, 1990, in the Western District of Michigan, Southern Division,

JOSEPH EMILE SISSLER,

defendant herein, did travel in interstate commerce from the State of Virginia to Ingham County, in the Western District of Michigan, with the intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, to wit: a business enterprise involving the possession with intent to distribute and distribution of marijuana, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841 (a) (1), and thereafter did perform and attempt to perform acts to promote, manage, and carry on and facilitate the promotion, management and carrying on of

said unlawful activity in that he attempted to purchase, obtain and possess approximately 100 pounds of marijuana for distribution to others as alleged in Count 1 of this Indictment.

18 U.S.C. § 1953 (a) (3)

A TRUE BILL

GRAND JURY FOREPERSON

JOHN A. SMIETANKA
United States Attorney

JOHN C. BRUHA
Assistant United States Attorney

APPENDIX E

APPENDIX E

The pertinent portions of the Plea Agreement read as follows:

PLEA AGREEMENT

Now comes the United States of America, by its attorneys, John. A. Smietanka, United States Attorney for the Western District of Michigan, and John C. Bruha, Assistant United States Attorney, and the defendant, Joseph Sissler, and his attorney, Stuart R. Shafer, and agree as follows:

1. Defendant Joseph Sissler agrees to enter a conditional plea of guilty . . .

* * *

2. Defendant expressly reserves the right, subject to approval of the court under Rule 11(a) (2) of the Federal Rules of Criminal Procedure, to appeal the denials of his pre-trial motions to suppress evidence in this case, and the government hereby consents to the entry of such a conditional plea.

APPENDIX F

APPENDIX F

The pertinent portions of the district court's September 21, 1990 Opinion read as follows:

THE HONORABLE BENJAMIN F. GIBSON,

COURT'S OPINION

THE COURT: It's clear to the Court that under certain circumstances a search warrant may be quashed for the seizure of items not mentioned in the search warrant if the conduct of the police officers is egregious or flagrant. Whether or not this is such a case, I'm not prepared to say absent a full development of the record.

If Mr. Shafer had represented to the Court that the particular conduct of which he was concerned was confined to the photographs and slides, then the Court could make a judgment as to whether or not those items were sufficient to bring this case within the rule set forth in the Lambert case. The Court could make a judgment of whether or not the conduct of seizing those items was flagrant.

However, Mr. Shafer says that there is an ongoing police investigation, which indicates to the Court that at least the police authorities believe that there is sufficient conduct which justifies an investigation. The Court is not confident that the information that is before the Court is all of the information that is out there.

Further, it is appears that the information that has come before the Court regarding the conduct of the police in the execution of this search warrant was information that was -- some of which was revealed subsequent to the suppression hearing that we had. Some of this information came to light in the context of information revealed at hearings involving the forfeiture case as it relates to Mr. Baldori.

Mr. Shafer has asked that the suppression hearing be reopened so that he can present information that is in the nature of newly discovered evidence; that is to say, evidence

that was not available to him or at least evidence that was not known to him at the time of the suppression hearing. The Court could resolve the matter by assuming that the representations that Mr. Shafer has made are accurate and then based on those representations, apply those facts to the law. The Court is reluctant to do that because there could be other information out there, and that should be brought to the attention of the Court. At least Mr. Shafer in the Court's judgment should be given a chance to present whatever information that he has relating to the issue of conduct of the police officers and also relating to the issue of the scope of what was seized as it relates to the limitations in the search warrant.

The court is concerned that since this is a conditional plea, that the issue that -- that the issues that were decided in the suppression hearing plus these issues would be presented to the appellate court, 6th Circuit.

The Court is also concerned that the 6th Circuit would wish to have a factual basis which would permit it to review the matter.

Given all of these circumstances, the Court is going to grant the motion to permit proofs to be reopened in connection with the suppression hearing, confined to the issues at hand; that is to say, the question of the good faith of the police officers and the question of whether or not other items beyond the scope of the search warrant were seized in flagrant disregard for the limitations set forth in the search warrant.

The Court is of the opinion that the matter is not waived. These issues are not waived because of the nature of the conditional pleas and also because of the fact that there has been no sentence in the matter. So we have a conditional plea, and you have a matter that has not been finalized by the sentence. An also the court is also swayed by the fact that this is in the Court's judgement

evidence that is indeed newly discovered or evidence that was not reasonably available to counsel at the time of the suppression hearing.

* * *

I would entertain argument and law on the principle issue of whether the search warrant should be suppressed in light of seizure of the additional evidence. It is not the Court's position that in all cases there should be a suppression. As a matter of fact, it is the Court's position that the rule is otherwise. And unless it's shown that the conduct and/or the items seized are of such a flagrant nature that would cause the Court to quash the search warrant -- I suppose there is a set of facts out there that would cause the Court to do that. I'm not prepared to say that in this case we have such facts. All I am saying is that the defendant should be given an opportunity to present proofs as to whether or not the conduct is flagrant to such

an extent that the entire search warrant should be quashed.

The usual remedy is that obviously those things outside of the search warrant are suppressed and are not admitted into evidence. That's the usual procedure. But there is that window that exists which permits the Court to quash the entire search warrant if the conduct is egregious or flagrant.

The court is not saying that in granting the motion to reopen that these photographs and/or slides are sufficient to constitute a flagrant violation. They may be, and they amy not be. It depends on the nature of the slides and what was done with them and the attitude of the police officers and the circumstances that caused them to be seized and whether or not they may be seized in any event for other reasons apart from the search warrant. That all has to be explored. But beyond that, there may be other conduct that the defendant should be able to present which

would add to that conduct involving the photographs.

The Court believes that the motion may have at least been presented in good faith because the police authorities are conducting their own investigation of the matter apparently. So the court will grant the motion to reopen the suppression hearing to pursue the issues that we have discussed on the record here.

APPENDIX G

APPENDIX G

The pertinent portions of the Judgment in a Criminal Case, Case No. 1:90 CR 12 read as follows:

UNITED STATES OF AMERICA

WESTERN DISTRICT OF MICHIGAN

UNITED STATES
OF AMERICA,

Plaintiff, Case No. 1:90-CR-12

v

JOSEPH EMILE SISSLER, Stuart Shafer
Defendant's Attorney

Defendant

THE DEFENDANT:
pleaded guilty to count One (1)

* * *

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offense:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
21 U.S.C. 846 & 851(a)(1)	Attempt Possession with Intent to Distribute	1/15/90	1

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The

sentence is imposed pursuant to the Sentencing Reform Act of 1984.

Count two (2) is dismissed on the motion of the United States.

It is ordered that the defendant shall pay a special assessment of $50.00 for count one (1) which shall be due immediately.

* * *

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of Fifty-Seven (57) months.

* * *

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of Three (3) years.

* * *

APPENDIX H

APPENDIX H

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v

JOSEPH EMILE SISSLER,

Defendant.

File N. 1:90-CR-12

Hon. Benjamin F. Gibson

MEMORANDUM OPINION and ORDER

At a session of the Court held in and for said District and Division, in the City of Grand Rapids, Michigan, this 7th day of October, 1991.

PRESENT: HON. BENJAMIN F. GIBSON, U.S. DISTRICT JUDGE

Defendant has brought an unopposed motion for release pending appeal. To be granted release, defendant must show that he is not likely to flee the jurisdiction, that he does not pose a danger to any other person or the community, and that the appeal was not interposed for purposes of delay. 18 U.S.C. §

3143; F.R.A.P. Rule 9(c).

This Court finds that defendant meets these criteria. Defendant has always appeared at scheduled hearings, and he has strong family and community ties. He works part time at several jobs. For these reasons, the Court finds that he is unlikely to flee the jurisdiction. Defendant's crime was not one of violence, and the drug tests administered to him as required by his pretrial release have all been negative. Therefore, the Court find that he does not present a danger to others or the community. Finally, the issues defendant raises on appeal are not frivolous. Therefore, the Court finds that they were not raised for the purposes of delay. Therefore, defendant's motion for release pending trial should be granted.

IT IS HEREBY ORDERED that defendant Joseph Emile Sissler's motion for release pending appeal is GRANTED.

BENJAMIN F. GIBSON
U.S. DISTRICT JUDGE

Dated: October 7, 1991

APPENDIX I

APPENDIX I

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

HON. BENJAMIN F. GIBSON

v

File No. 1:90 CR 12

JOSEPH EMILE SISSLER,

Defendant.

ORDER EXTENDING REPORT DATE

At a session of the Court held in and for said District and Division in the City of Grand Rapids, Michigan, this ____ day of September, 1992.

PRESENT: HON. BENJAMIN F. GIBSON, DISTRICT JUDGE

This matter having come before the Court pursuant to a Third Motion to Extend Time filed by defendant, and the Court having reviewed said motion herein and otherwise being fully advised in the premises;

IT IS HEREBY ORDERED that defendant's motion is **GRANTED**. The defendant is to report

to the U.S. Marshal's in Grand Rapids, Michigan on Friday, October 23, 1992 by 2:00 p.m.

IT IS SO ORDERED.

BENJAMIN F. GIBSON
DISTRICT JUDGE

APPENDIX J

APPENDIX J

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

Case No. 90-4M

In the Matter of
the Search of:

the premises known as 2719 E. Mount Hope Rd. including curtilage and outbuildings, Okemos, Michigan, County of Ingham

***

ATTACHMENT

unknown quantity of marijuana; scales used to weigh marijuana; proceeds of marijuana sales in the form of U.S. currency; records of marijuana transactions; records of assets purchased with the proceeds of marijuana transactions; safety deposit box keys; phone numbers of marijuana customers and sources of supply for marijuana.

***

AFFIDAVIT

Affiant, DENNIS LANGKOS, being duly sworn, deposes and states the following:

1. Affiant is a Special Agent (SA) of the Federal Bureau of Investigation (FBI) and has

been so employed since July, 1972. Since October, 1977, Affiant has been assigned to the Lansing, Michigan Resident Agency of the FBI and,since 1982, Affiant has been assigned to investigate violations of Federal narcotics laws.

2. Affiant avers that probable cause exists to believe that on the premiss commonly known as 2719 East Mount Hope Road, Okemos, Michigan, said premises being the residence of ROBERT (BOB) BALDORI and KELLY BOYCE and the location of Lansing Sound Studios, Incorporated, and Kelly Screen Printing, there currently exists and unknown quantity of marijuana; scales used to weigh marijuana; proceeds of marijuana sales in the form of U.S. currency; records of marijuana transactions; records of assets purchased with the proceeds of marijuana transactions; safety deposit box keys; and phone and address books containing the names, addresses and telephone numbers of BALDORI'S marijuana customers and

sources of supply for marijuana. Further it is anticipated that during the evening hours of Monday, January 15, 1990, there will exist on the premises in excess 100 pounds of marijuana and a sum of U.S. currency, the intended us of which is to pay for said marijuana. The probable cause is as follows:

3. SA GENE KROUCH of the FBI Office in Little Rock, Arkansas, has advised the Affiant that on December 2, 1989, FBI Agents in Little Rock, Arkansas, arrested EDWARD KANE of Boulder, Colorado, and ROGER SPAGNUOLO of Lansing, Michigan. These arrests had taken place after KANE had purchased 85 pounds of marijuana which was then placed into an automobile being driven by SPAGNUOLO. In a subsequent interview with FBI Agents, SPAGNUOLO advised that he had driven to Little Rock, Arkansas, at the request of JIM JOSEPH of Lansing, Michigan, for the purpose of picking up the marijuana which was to be furnished to him by KANE. SPAGNUOLO was then

going to drive the marijuana back to Lansing, Michigan and deliver it to JOSEPH. For this service, JOSEPH was to pay SPAGNUOLO a sum of $2,000. SPAGNUOLO made JOSEPH aware of the fact that he had implicated him (JOSEPH) in the scheme and, subsequent to that, JOSEPH traveled to Little Rock, Arkansas, for the purpose of meeting with Federal authorities regarding the matter in question. In a subsequent interview with FBI Agents, JOSEPH admitted his role in the marijuana transaction which had occurred on December 2, 1989, and he also admitted four previous marijuana transactions involving himself and KANE which had occurred during 1989. Further, JOSEPH stated that he had only one customer for all of the marijuana which he had purchased from KANE during 1989, that customer being BOB BALDORI of Okemos, Michigan.

4. Further, SA KROUCH has advised the Affiant that JOSEPH had entered into a plea agreement with the UNITED STATES ATTORNEY'S

OFFICE in Little Rock, Arkansas, and part of this agreement included JOSEPH'S full cooperation in matters remaining under investigation, this cooperation to include his assistance into the investigation of the illegal drug activity of BOB BALDORI.

5. Affiant avers that on January 4, 1990, Affiant and Detective Lieutenant PAUL WHITFORD of the Michigan Department of State Police, interviewed JIM JOSEPH at his residence located at 2455 Aurelius Road, Apartment number 5, Lansing, Michigan. During that interview, JOSEPH advised that he has known BOB BALDORI for approximately 20 years and that, in the past, he had worked with BALDORI in the music business. JOSEPH also advised that since BALDORI became an attorney licensed to practice law, BALDORI had represented him on various civil matters. At the present time, BALDORI is representing JOSEPH regarding a traffic offense which allegedly took place in Lansing, Michigan. JOSEPH also advised

that, during the early part of 12989, through personal conversations with BALDORI, he learned that BALDORI is also in the business of buying and selling marijuana.

6. Further, JOSEPH advised that when he (JOSEPH) lived in Colorado, he had met ED KANE, supra, and had purchased marijuana from KANE in the past. JOSEPH advised that about the same time that he had learned about BALDORI's marijuana activities, KANE contacted him and asked him if he wanted to buy some marijuana. According to JOSEPH, BALDORI was willing to purchase marijuana furnished to JOSEPH by KANE and, as a result of this, beginning in April or May of 1989, JOSEPH was part of four marijuana transactions wherein KANE furnished marijuana to JOSEPH, and JOSEPH then sold the marijuana to BALDORI. A total of approximately 400 pounds of marijuana was involved in these four transactions with each transactions totaling approximately 100 pounds of marijuana. In addition JOSEPH has

purchased small amounts of high quality personal use marijuana from BALDORI during 1989.

7. Further, JOSEPH advised that the method of operation for each and every one of the before mentioned marijuana transactions was exactly the same. On each occasion, KANE would contact JOSEPH and advise him of the weight of the marijuana that was being shipped and of the estimated time of arrival. JOSEPH would then contact BALDORI and advise him of the information that had been received from KANE. The marijuana was always delivered into the Lansing area in an automobile being driven by someone working for KANE. After JOSEPH took possession of the marijuana, he would then deliver the marijuana to BALDORI's residence on East Mount Hope Road in Okemos, Michigan. JOSEPH stated that the residence is occupied by BALDORI and his girlfriend, KELLY (Last Name Unknown). This residence is also the location of a recording studio owed by

BALDORI, Lansing Sound Studios, Incorporated, and it is also the location of a screen printing business operated by BALDORI'S girlfriend. JOSEPH stated that once the marijuana was delivered to BALDORI, he weighed the marijuana to make sure that the stated weight was correct. JOSEPH stated that he would then leave the residence and wait for a call from BALDORI who would then inform him that the money for the marijuana was ready to be picked up. JOSEPH would then return to BALDORI'S residence, pick up the money, and then give the appropriate amount of money to the runner, if he was still in town. BALDORI would pay JOSEPH as early as an hour to two hours after the marijuana had been delivered.

8. Further, JOSEPH advised that BALDORI has advised him that he (BALDORI) his other sources of supply for bulk quantities of marijuana. JOSEPH also recalled that, on one occasion, BALDORI contacted him and attempted to place an order for 500 pounds of marijuana.

JOSEPH was unable to fill this order because KANE could not provide him with that much marijuana at that time. On that occasion, BALDORI advised JOSEPH that this marijuana was for an old customer who lived somewhere in the state of New York. JOSEPH does not know the identities of any of BALDORI's customers.

9. Further, concerning the 85 pounds of marijuana purchased by ED KANE on december 2, 1989, JOSEPH stated that this marijuana would also have been delivered to BALDORI had SPAGNUOLO not been arrested, and this would have been the fifth marijuana transaction in 1989 which involved KANE, JOSEPH, and BALDORI. JOSEPH added that BALDORI was very careful about meeting new people and never wanted to meet KANE. When JOSEPH failed to deliver the 85 pounds of marijuana to BALDORI, JOSEPH told BALDORI that KANE had refused delivery of the marijuana from his source of supply because of very low quality.

10. On January 10, 1990, JOSEPH advised

Affiant that he had been in contact with BALDORI and had advised BALDORI that his source of supply for marijuana in Colorado was prepared to send a shipment of marijuana. According to JOSEPH, BALDORI showed interest in purchasing this marijuana.

11. Affiant avers that during the evening hours of January 10, 1990, JOSEPH's person was searched and found to be void of controlled substances. The passenger compartment of JOSEPH'S vehicle was also searched and found to be void of controlled substances. The passenger compartment of JOSEPH's vehicle was also searched and found to be void of controlled substances. A Nagra body recorder and a transmitting device were then secreted on JOSEPH'S person and, thereafter, JOSEPH was surveilled to BALDORI's residence at 2719 East Mount Hope Road, Okemos, Michigan. JOSEPH then met with BALDORI and discussed the impending marijuana transaction. BALDORI tentatively agreed to

accept delivery of approximately 100 pounds of marijuana at a delivery price of $950 per pound. JOSEPH advised BALDORI that it would be possible to make the delivery as early as Friday evening, January 12, 1990. BALDORI also sold to JOSEPH one ounce of what he purported to be high quality marijuana for a purchase price of $240.00. At that time, BALDORI advised JOSEPH that the usual selling price for this marijuana was $300.00 per ounce and that he estimated that he had enough of this marijuana left to last until the following Wednesday, which would be January 17, 1990.; At that time, BALDORI also discussed whether or not he could line up his customer(s) by Friday, so he could make a quick turnaround on the marijuana and pay JOSEPH.

12. On January 11, 1990, Detective Lieutenant WHITFORD advised Affiant that he had conducted a chemical field test on the material purchased by JOSEPH from BALDORI the

previous evening and that the results of this test showed that the substance tested positive for marijuana. WHITFORD further advised that on January 11, 1990, he had been contacted by JOSEPH who advised him that BALDORI advised JOSEPH that he could not get his customers lined up to take delivery until Monday, January 15 1990. Further, BALDORI wanted more than 100 pounds of marijuana if it could be obtained, as BALDORI'S customer wanted more than 100 pounds of marijuana. BALDORI had also advised JOSEPH that he wanted to "cash out" which, according to JOSEPH, means that BALDORI would have the cash at his house within one to two hours after the time that JOSEPH delivered the marijuana to BALDORI at 2719 East Mount Hope Road.

13. Further, WHITFORD advised Affiant that he had made arrangements to obtain approximately 160 pounds of marijuana and that this marijuana would be provided to JOSEPH during the evening hours of January 15, 1990,

and that thereafter, JOSEPH would make a controlled delivery of marijuana to the BALDORI residence.

14. On January 10, 1990, JOSEPH advised Affiant that on previous occasions when he had been in the BALDORI residence, he has observed two scales. One of these scales is a small triple beam balance scale which BALDORI uses to weigh small quantities of marijuana, and JOSEPH has also observed a larger bulk scale which BALDORI uses to weight multi-pounds of marijuana. JOSEPH has also observed in the residence marijuana seeds which BALDORI was germinating.

15. Affiant avers that from personal experience investigating narcotics violations for nearly eight years, he knows that individuals involved in illegal drug activities frequently maintain in their residence keys for safety deposit boxes which are used to conceal proceeds from drug transactions, financial records showing the

location and account numbers of bank utilized to deposit the proceeds of drug transactions, records reflecting the purchase and sale of illegal drugs, records showing the acquisition of assets purchased with drug proceeds, telephone toll records showing long distance telephone calls made to drug suppliers and drug customers, and address and telephone books showing the names, addresses and telephone numbers of customers and sources of supply.

16. Affiant avers that the most recent telephone directory for the Lansing, Michigan, area lists ROBERT BALDORI, 2719 Mount Hope Road, Okemos, Michigan.

17. The property to be searched is an L-shaped structure consisting of a two story single family residence which has attached to it a single story recording studio, said structure being of wood frame construction and wooden exterior and curtilage. This property is located immediately adjacent to and East of

the Montessori School on E. Mt. Hope Road and being approximately 75 yards west of the intersection of Copperhill Drive and E. Mt. Hope Road.

18. Affiant requests the issuance of an anticipatory search warrant to be effective upon the delivery of the requested marijuana to 2719 E. Mt. Hope Road, Okemos, Michigan. Affiant further requests authorization to search at any time during the day or night, since it is unknown at this time when both the marijuana and the anticipated payment will be at the location to be searched.

19. Affiant further sayeth not.

DENNIS W. LANGKOS,
Special Agent
Federal Bureau of
Investigation

The pertinent portions of the Search Warrant read as follows:

> I am satisfied that **upon delivery of marijuana** to 2719 E. Mount Hope Rd., Okemos, Michigan, **there will be** [approximately six (6) pre-printed words are blackened out by magic marker] **probable cause** to believe that the property so described is being concealed

> on the person or premises above-described . . . YOU ARE HEREBY COMMANDED, **upon delivery** of marijuana to 2719 E. Mount Hope Rd., Okemos, Michigan, to search ...

(Emphasis Added).

* * *

ATTACHMENT

unknown quantity of marijuana; scales used to weigh marijuana; proceeds of marijuana sales in the form of U.S. currency; records of marijuana transactions; records of assets purchased with the proceeds of marijuana transactions; safety deposit box keys; phone numbers of marijuana customers and sources of supply for marijuana.

APPENDIX K

APPENDIX K

Pertinent portions of Dennis Langkos'

Testimony taken on May 24, 1990 before the

Hon. Benjamin F. Gibson read as follows:

Q. What, if anything, did you do to verify the information that Joseph gave you?

A. Concerning like what point?

Q. Any point.

A. I don't know if I can really answer that. The suppression -- it pertains to the suppression order. But I'll start to say that, Number 1, the conversations that occurred between Baldori and Joseph on the night of January 10th to a certain extent verified or corroborated what Joseph had already told us.

Q. Did you put any of that into the search warrant?

A. I think the affidavit speaks for itself.

Q. Well, I don't care what you think. Did you put any of that into the search warrant?

A. Like what?

Q. Any verification or corroboration of information that Joseph supplied you.

A. I would have to read the search warrant and see how you define corroboration. Certainly it does mention that the conversations were tape-recorded and that during those conversations there is mention of this deal that they were making. Certainly every detail of the conversation is not

mentioned in the affidavit.

Q. Okay. Isn't it true that you never put in the search warrant affidavit what those conversations were, only that Mr. Joseph was wearing a tape recorder?

A. I think it is my recollection I put in they came to an agreement concerning the delivery of the marijuana.

Q. Did you try to verify or corroborate any information that Joseph supplied you concerning the history of Baldori, his history with Baldori?

[Objections]

THE COURT: Well, you may proceed in connection with this matter.

MR. SHAFER: Thank you.

Q. Isn't truth that Joseph advised you that he -- the first deal he had with Baldori was in April or May of 1989 for about a hundred pounds?

A. I recall that.

Q. And that a runner stayed at the Knights Inn in Pennsylvania and that Cane flew in and stayed at the Knights Inn on West Saginaw.

[Objections]

Q. What if anything did you do to verify that a runner stayed at the Knights Inn on South Pennsylvania?

A. Number 1, Mr. Joseph did not know the identify of the runner. We do know whether he would have registered in his true name even if we did.

Likewise, as far as Mr. Cane, in my dealings with the airlines, they do not keep passenger lists for that length of time. And, Number 2, we do not know, even if they did, if he traveled under his true name. And in my experience also, individuals do not always register in their true names at hotels or motels.

So your answer is: Basically did I check that out? No. But the reason for it is the probability of being successful or that coming to fruition are just about nil. But, Number 1, Mr. Joseph didn't have the runner's identity.

Q. Cane was cooperating with law enforcement in Little Rock; isn't that correct?

A. No, not at that time. If he is now, I don't know if he is or isn't.

Q. The answer is you made no effort to corroborate that information?

A. I would like to qualify the answer saying, Number 1, the majority of his dealings concerning these marijuana transactions with the exception of Cane, which I've just discussed and the runner, which I've just discussed, Mr. Joseph alleged to be one-on-one transactions. And certainly without going to Mr. Baldori at that point, what else can you try to verify and corroborate?

Q. He also advised you of a second deal in June for about a hundred pounds where a runner stayed at the Holiday Inn on South Pennsylvania. Isn't that correct?

A. If that's what the affidavit says, yes.

Q. The affidavit doesn't say it. Whitford's report says that.

A. He could have said that, yes.

Q. What, if anything, did you do to corroborate that?

A. My answer to that question would be the same as to the answer on the first one, where again you would not know the identity of the runner. If we did, we do no know the identify the runner used to register.

Q. And would your answer be the same with respect to the information he provided for a third deal of August and September of 1989?

A. That is correct.

Q. And for a fourth deal in October of 1989?

A. That is correct.

Q. Would it be correct that prior to having him contact Baldori in this investigation, you made no effort to corroborate or verify any of the information he provided to you about Baldori?

A. Some of the information I knew already.

[Counsel's comments]

THE COURT: Well, the record doesn't reflect what information we're talking about.

Do you know, Witness, what information? What information did you refer to?

THE WITNESS: Well, you know, he talked about Baldori having a recording studio and things like that; and, certainly I knew that already. He said that Baldori was a practicing attorney. I knew that already.